

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

~~City~~ of Erie

~~Town~~

~~Village~~

Local Law No. 8 of the year 2005.

A local law prohibiting the possession and/or use of "photo phones"  
(Insert Title)  
in private areas

Be it enacted by the Legislature of the  
(Name of Legislative Body)

County

~~City~~ of Erie

~~Town~~

~~Village~~

as follows:

## SECTION 1. Short title.

This Local Law shall be known as the "Prohibiting the Possession and/or Use of  
"photo phones" in Private Areas.

## SECTION 2. Legislative Findings.

The Legislature of Erie County hereby finds that recent events have focused residents of Erie County on how easy "photo phone" users can take pictures or images of others without the subjects' knowledge. This is especially disconcerting in the context of places such as gyms and locker rooms, where many people expect and deserve a certain degree of privacy. Because it is easy for "photo phone" users to take pictures while appearing to talk on the phone, there exists the potential that photos will be taken of persons in potentially compromising or embarrassing positions and in places that they would not normally expect such pictures to be taken. This law would ban the use of "photo phones" where the subject(s) does not know that they are the subject of the photo from all areas where there exists an expectation of privacy and punish those who violate the law.

## SECTION 3. Definitions and Word Usage

A) The term "photo phone" shall mean any device or connected electronic or mechanical system that acts as both an imaging device and a transmission device, regardless of size or shape.

B) The term "private area" shall mean any area where persons would normally expect a certain modicum of privacy, even in the presence of other persons, or would normally expect to be in various stages of undress, including, but not limited to, lockers room, gyms, weight rooms, indoor saunas, indoor swimming pools, indoor hot tubs, and similar indoor places.

C) The term "imaging device" shall mean any mechanical, digital or electronic viewing device, camera or any other instrument capable of recording, storing or transmitting visual images that can be utilized to observe a person.

D) The term "transmission device" shall mean any wired or wireless mechanical,

(If additional space is needed, attach pages the same size as this sheet, and number each.)

digital or electronic device, camera or any other instrument capable of giving, providing, delivering, mailing, sending, forwarding, transferring or transmitting a visual image created by an imaging device, electronically or otherwise, to another person.

#### **SECTION 4. Application.**

A person is guilty of unlawful use of a photo phone when he or she uses a photo phone in a private area as either an imaging device or as a transmission device without the consent of the person or persons in the photo.

#### **SECTION 5. Penalties for Offenses**

a) A first offense for failure to comply with the provisions of Section 3 of this Chapter shall constitute a violation and shall be punishable by a fine not exceeding two hundred fifty dollars (\$250.00) or imprisonment for a period not to exceed fifteen (15) days, or by both such fine and imprisonment. Each offense shall constitute a separate and distinct violation for each day the offense is continued.

b) A failure to comply with the provisions of Section 3 of this Chapter for a person who has been previously convicted of violating this Chapter shall constitute a class A misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a period not exceeding one (1) year or by both such fine and imprisonment. Each use of a photo phone, whether as an imaging device or as a transmission device, shall constitute a separate and distinct misdemeanor hereunder.

#### **SECTION 6. Exceptions.**

This Local Law shall not apply to a) law enforcement personnel engaged in their authorized duties; b) premises surveillance systems, provided that persons in the private area are notified by a sign at least two feet by three feet at all entrances to such private area that such surveillance system exists in the private area; and c) premises surveillance systems, provided that they are installed in such a manner that their presence is clearly and immediately obvious to persons in the private area.

#### **SECTION 7. Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its

application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**SECTION 8. Effective Date.**

This local law shall become effective immediately upon filing in the Office of the New York State Secretary of State pursuant to section 27 of the municipal home

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ 8 of 20 05 of the (County)(City)(Town)(Village) of \_\_\_\_\_ Erie \_\_\_\_\_ was duly passed by the \_\_\_\_\_ Erie County Legislature on July 7, 20 05, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ Erie County Executive \_\_\_\_\_ and was deemed duly adopted on August 1 20 05, in accordance with the applicable provisions of law.  
(Elective Chief Executive Officer\*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Elective Chief Executive Officer\*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Elective Chief Executive Officer\*)

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)


I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

  
\_\_\_\_\_  
Clerk of the County legislative body, City, Town or Village Clerk  
or County Designated Local Legislative Body

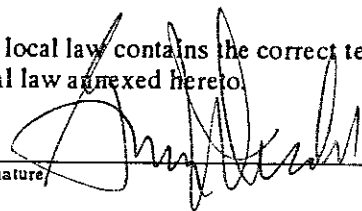
(Seal)

Date: 8-10-05

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Erie

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
\_\_\_\_\_  
Signature  
Assistant County Attorney  
\_\_\_\_\_  
Title

County \_\_\_\_\_  
☒ City of Erie  
☒ Town \_\_\_\_\_  
☒ Village \_\_\_\_\_

Date: August 17, 2005

A Public Hearing was held on the foregoing Local Law Intro. No. 18-2004 on Friday, July 22, 2005, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 1 day of ~~July~~ August, 2005.

A handwritten signature in cursive script, appearing to read "Joel A. Giambra", is written over a horizontal line.

A Public Hearing was held on the foregoing Local Law Intro. No. 18-2004 on Friday, July 22, 2005, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this \_\_\_\_ day of July, 2005.

A single horizontal line, intended for a signature, is positioned below the DISAPPROVE and VETO text.